

HIGH COURT OF GUJARAT**Bench: Honourable Mr. Justice Hasmukh D. Suthar****Date of Decision: 15/12/2023**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 7387 of 2023**JOJO THOMAS KANNAPPILLY****Versus****STATE OF GUJARAT****Legislation:**

Section 482 of the Code of Criminal Procedure, 1973 (CrPC)

Sections 3, 4, 5, and 7 of the Immoral Traffic Prevention Act, 1956

Section 370(a)(2) of the Indian Penal Code, 1860

Subject :

Quashing of FIR: Application for quashing an FIR under Section 482 of CrPC in connection with offences under the Immoral Traffic Prevention Act and IPC.

Headnotes:

Criminal Misc. Application – Quashing of FIR – Application under Section 482 of CrPC for quashing FIR related to offences under the Immoral Traffic Prevention Act and IPC. The applicants, alleged customers at a massage parlor, sought to quash the FIR alleging false implication in the offence. The Court considered whether customers could be held liable under the relevant sections of the Immoral Traffic Prevention Act and IPC. [Para 2, 4]

Investigation and Chargesheet – Role in Deciding Quashing of FIR – Despite the investigation being over and a chargesheet filed, the Court examined the applicability of various sections of the Prevention Act and IPC to the applicants, focusing on their role as customers rather than managers or persons directly involved in the alleged offences. [Para 5, 6, 7]

Applicability of the Immoral Traffic Prevention Act – Analysis of Sections 3, 4, 5, and 7 – The Court discussed the applicability of sections of the Prevention Act, concluding that the applicants, as customers, did not fall

under the categories specified for punishment under these sections.
[Para 6, 7]

Section 370(a)(2) of IPC – Lack of Evidence for Trafficking Involvement – The Court found no evidence in the investigation papers to suggest that the applicants had knowledge of sexual exploitation or were engaged in trafficking, as alleged under Section 370(a)(2) of IPC. [Para 7]

Exercise of Power under Section 482 CrPC – Guiding Principles and Judicial Precedents – The Court elaborated on the principles guiding the exercise of power under Section 482 of CrPC, referencing judgments from the Supreme Court and other High Courts to underline the cautious approach required in quashing proceedings. [Para 8, 9, 10]

Order – Quashing FIR and Consequential Proceedings – Based on the analysis of allegations and legal provisions, the Court concluded that the FIR did not disclose the commission of any offence by the applicants and was an abuse of the process of law. Consequently, the FIR and all consequential proceedings were quashed. [Para 11, 12, 13]

Referred Cases:

- Central Bureau of Investigation vs. Ravi Shankar Srivastava, IAS & Anr., reported in AIR 2006 SC 2872.
- State of Haryana v. Bhajan Lal, reported in AIR 1992 SC 604.
- Umedsinh P. Champavat v. State of Gujarat, 2006 (2) GLH 736.
- State of Gujarat v. Bai Radha, w/ o Natvarlal Ramshankar & Another (9 GLR 261).

Representing Advocates

MS VIRAL A DETROJA for the Applicant(s) No. 1,2

MR SOHAM JOSHI, APP for the Respondent(s) No. 1

Date : 15/12/2023
ORAL ORDER

1. Rule. Learned APP waives service of notice of Rule for the respondent-State.
2. Present application is filed by the applicants under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “CrPC”) seeking to quash and set aside the FIR being CR No.11210048220092 of 2022 registered with Umra Police Station, Surat for the offences punishable under Sections 3, 4, 5, and 7 of the Immoral Traffic Prevention Act (for short,

“Prevention Act”), 1956 and under Section 370 (a)(2) of the Indian Penal Code, 1860.

3. Heard learned advocates for the respective parties.
4. Learned advocate for the applicants submits that the applicants have nothing to do with the offence alleged and they are falsely implicated in the offence. It is submitted that the facts of the case are that on 27.01.2022, the complainant informed the police authority that at SPA Massage Parlor, some immoral activities are going on in the name of a massage parlor. Therefore, the police decided to raid the place. During the raid, accused No.1, who is the Manager of the SPA Center, was found at the entrance. He admitted that they were offering immoral activities to customers, charging additional money apart from the regular payment. It is further stated that during the search of the rooms, the applicants were found with the girls providing services, and upon inquiry, it was revealed that the applicants were present there as customers. It is submitted that if we accept the case as it is, then the applicants do not fall under any of the sections mentioned in the complaint. It is asserted that a customer is not liable for the activities conducted by the manager or owner of the place under the Immoral Traffic Prevention Act. Therefore, the application be allowed as the applicants are customers, and customers are not held liable for the activities conducted by the manager under the Immoral Traffic Prevention Act.
5. Learned APP has vehemently opposed the present application and submitted that the investigation is over and a chargesheet has been filed, but the charge is yet to be framed by the learned trial Court. It is asserted that the present applicants are directly involved in the offence as they were found at the place of the offence. Therefore, the present application may be dismissed.
6. Having heard the learned advocates for the respective parties and having gone through the documents on record, it appears that the present applicants are customer and they were found at the place of the offence. The investigation is over, and a chargesheet has been filed. Regarding Section 3 of the Prevention Act, it stipulates that any person who keeps or manages, or acts or assists in the keeping or management of a brothel shall be punished under this Act. In relation to Section 4 of the Prevention Act, any person over

the age of eighteen years who knowingly lives, wholly or in part, on the earnings of prostitution shall be punished under this Act. As for Section 5 of the Prevention Act, any person procuring, inducing, or taking for the sake of prostitution shall be punished under the Act. With respect to Section 7 of the Prevention Act, any person who runs prostitution in or in the vicinity of public places shall be punished under the Act.

7. It appears from the papers on record and the evidence of witnesses that the present applicants were only customers and were not involved in any category mentioned under the Prevention Act. The premises do not belong to the applicants, and they were not running any brothel, nor is their livelihood related to prostitution. Regarding Section 370(a)(2) of IPC, which pertains to the offence of trafficking, there is nothing in the investigation papers and complaint indicating that the present applicants had knowledge that they were engaged in the sexual exploitation of victims.
8. In the aforesaid backdrop, complaint is filed. It is necessary to consider whether the power conferred by the High Court under section 482 of the Code of Criminal Procedure is warranted. It is true that the powers under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hardand-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage as the Hon'ble Supreme Court has decided in the case of Central Bureau of Investigation vs. Ravi Shankar Srivastava, IAS & Anr., reported in AIR 2006 SC 2872.
9. This Court has also relied on the judgment passed by the Apex Court in the case of State of Haryana v. Bhajan Lal, reported in AIR 1992 SC 604.
10. This Court has also relied upon the judgment passed by the

Coordinate Bench of this Court in the case of Umedsinh P. Champavat v. State of Gujarat, 2006 (2) GLH 736. This court may quote with profit the relevant paragraphs of the judgment:

“9. Section 3 of the said Act provides punishment for keeping the brothel or allowing the premises to be used as brothel and on bare words of one of the co-accused, the petitioner could not have been prosecuted under this Act because as per the scheme of Section 3, it is obligatory on the part of the prosecution to show from evidence that the petitioner had kept brothel and he was responsible or liable for allowing a particular premises to be used as a brothel. When he was not there in the effective management of the hotel on the relevant date, no chargesheet under Section 3 of the Act could have been filed against the present petitioner.

10. So far as as the offence punishable under Section 4 of the Act is concerned, it provides punishment for living on the earning of prostitution. Section says that any person over the age of 18 years who knowingly lives, wholly or in part, on the earnings of the prostitution (of any other person) is said to have committed an offence under the Act. In view of the details given by the petitioner as to his business activities and involvement in hotel and resort business and other businesses like mining etc., it would not be proper for this Court to accept the say of Id. APP that there is prima facie evidence to show that the petitioner has committed offence punishable under Section 4 of the Act.

11. The petitioner has also been charged with the offence punishable under Section 5 of the Act which says that any person who _
(a) procures or attempts to procure a person, whether with or without his consent for the purpose of prostitution, or (b) induces a person to go from any place with the intent that he/she may for the purpose of prostitution becomes the inmate of, or frequent, or a brothel, or

(c) takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying-on, or being brought upto carry-on prostitution, or (d) causes or induces a person to carry on prostitution, shall be punishable under the Act.

It has been submitted that the evidence which has been collected by the investigating agency in the form of Statements of the co-accused and the so-called prostitutes, at least rules out applicability of clause (b), (c) and (d) in toto. It is not even the case of the prosecution that the accused is said to have committed an offence under clause (b), (c) or (d). What is alleged is that the petitioner has procured or has attempted to procure a person for the purpose of prostitution. The question of Law which falls for consideration of the Hon'ble Court is as to whether a customer or a person who enjoys sex with a prostitution can be said to have procured a person for the purpose of prostitution.

(ii) The word "procures" used in this section connotes that somebody other than the petitioner should procure the woman for him. Section 5(i)(a) of the Act can be invoked only against the procurer like the agent or a pimp and not against persons like the petitioner because there is no allegation or the case that the petitioner was a person involved in procuring a woman. On the contrary, the case of the prosecution is that

somebody else was procuring a woman or a girl and certain hotels were being used by them doing booking of rooms.

12. Ld. counsel Mr. Anandjiwala has drawn attention of this Court on the observations made by this Court in para-26 of the decision in the case of State of Gujarat v. Bai Radha, w/ o Natvarlal Ramshankar & Another (9 GLR 261). It would be beneficial to quote the relevant para-26 which is as under:-

"26. Sec.5(1)(a) provides that any person who procures or attempts to procure a woman or girl, whether with or without her consent, for the purpose of prostitution, that person shall be punished as provided therein. In this respect also Mr. Nanavati's contention was that accused No.3 can be said to have procured a woman such as Bai Kanta for the purposes of prostitution to Kishan and that, therefore, he can be held liable for the offence under Section 5(1)(a) of the Act. The word "procure" is not defined under the Act, but we were referred to its dictionary meaning which says "To bring about by care or pains; also (more vaguely) to bring about, cause, effect, produce; to obtain by care or effort; to acquire; to obtain (women) for the gratification of lust; to prevail upon, induce, persuade (a person) to do something." Giving the normal meaning to the use of the word "procure" in clause (a) of sub-section (1) of Section 5, what is required is only that he must have obtained a woman or a girl for the purpose of prostitution for a particular individual."

Mr. Anandjiwala has placed emphasis on words "obtain a woman or a girl for the purpose of prostitution for a particular individual" and it is argued that from these observations made, it is sufficiently clear that Section 5(i) (a) of the Act would not be attracted at all in the present case so far as the present petitioner is concerned.

13. The petitioner is also charged with the offence under Section 7 of the Act. Section 7 of the Act makes the prostitution in or in the vicinity of public places an offence. Firstly, the prostitution in itself is not an offence under the Act, save in the manner given in Sections 7 and 8. Firstly, the petitioner by any stretch of imagination cannot be charged with this offence under Section 7 of the Act because to attract the said section, the prosecution must prima facie show that the petitioner is carrying on prostitution. It is only when the first ingredient is satisfied then the question would be as to whether the prostitution is being carried out in or in the vicinity of public place. When Section 3 of the Act is not applicable, when Section 4 of the Act is not applicable to the present petitioner, there is no question of charging the accused with the offence punishable under Section 7 of the Act. When no formal raid was carried out at Hotel Taj Residency Umed and no part of the premises of the said hotel was found in actual use of such illegal activities, it would not be legal to continue the prosecution against the petitioner for using the public place for the activities of prostitution.

14. Section 9 of the said Act, on the face of it, is not applicable in the facts and circumstances of the present case. For attracting Section 9 of the Act, it has to be shown prima facie that the petitioner having position or authority over any person, i.e. a woman or girl causes or aids or abets the seduction for prostitution of that woman or girl. The question again, at the cost of repetition, is the petitioner's position or authority over any such woman or girl. There is not a thread of any evidence even to remotely suggest that the petitioner taking undue advantage of his position or

authority over any woman or girl, caused or aided or abetted the seduction for prostitution of that woman or girl.

15. Undisputedly, powers of this Court under Section 482 of CrPC are very wide. It is true that the same should be used sparingly and in rare case, where it is apparent from record that the prosecution has no case. The discretion for quashing the complaint or chargesheet must be carefully used and the High Court must see that its decision in exercise of its power is based on sound principles. As per the settled legal position, as observed by the Apex Court, if FIR fails to disclose the commission of offence without anything being added or subtracted from recitals therein then the High Court would be absolutely justified in quashing the FIR or the chargesheet. In the present case, there is no legal evidence against the petitioner and, therefore, quashing of the FIR and the chargesheet would be justified. The Court is also supposed to consider the nature of allegations made more particularly in the case which has been put forward against the petitioner accused. The Court is in agreement with the say of Id. counsel Mr. Anandjiwala that the ratio of the decision in the case of Bai Radha (supra) would help the petitioner and even on facts, it emerges that the prosecution instituted against the present petitioner is not even healthy one. Totally illegal implication in the offence is equal to a false implication and for such an act, the prosecuting officer/agency can be held liable for malicious prosecution. But this exercise has to be made by the person falsely implicated before the competent forum in accordance with law. The petitioner is entitled to do it.”

11. After going through the contents of complaint, it appears that uncontroverted allegations are made in the complaint. If accepted the same in toto, the commission of offence under the provisions of Immoral Traffic Act is not made out. Even if the allegations made in the complaint are taken at its face value and accepted in its entirety, did not constitute any offence or make out the case alleged one.

12. In view of the above, it appears that the FIR does not reveal any of the ingredients of the alleged criminal offence and the case appears to be nothing but an abuse of process of law and bona fide lapse.

13. In the result, this application is allowed. The Complaint/F.I.R. being CR No.11210048220092 of 2022 registered with Umra Police Station, Surat is hereby ordered to be quashed and set aside qua the present applicants. All consequential proceedings pursuant thereto shall also stand terminated. Rule is made absolute. Direct service is permitted.

*Disclaimer: Always compare with the original copy of judgment from the official website.